

# Case Law Today - January 2011

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California Commission on Peace Officer Standards and Training

### Probable Cause to Arrest

with William W. Bedsworth, Appellate Court Justice, State of California  
Casual conversation between an officer and a suspect does not constitute "custodial interrogation." Cases cited: *Rhode Island v. Innis* (1980) 446 U.S. 291; *Oregon v. Bradshaw* (1983) 462 U.S. 1039; *Mickey v. Ayers* (2010) DAR 8377. (6:43)

### Parental Consent to Search Over Child's Objection

with Jeff Rubin, Deputy District Attorney, Alameda County, CA  
A person who raises his hands in the air in response to an officer's request to search his person, but who does not orally agree to the search, can still be found to have voluntarily consented to the search. Case cited: *United States v. Vongxay* (9th Cir. 2010) 594 F.3d 1111. (12:47)

### Extended Border Searches: Do-Overs?

with Daniel Mc Nerney, Superior Court Judge, Orange County, CA  
An overview of consent search cases including the following concepts and cases: OK to request consent to search, even if no suspicion of wrongdoing (*Florida v. Bostick* (1991) 501 US 429); OK to get consent, even if suspect detained, cuffed and caged (*People v. Llamas* (1991) 235 Cal. App. 3d 441); OK to get consent, even if suspect in custody (*US v. Watson* (1976) 423 US 411); OK to get consent, even if suspect is not present where search is to occur (*US v. George* (9th Cir. 1993) 987 F. 2d 1428); no need to tell the suspect he has the right to refuse consent (*Ohio v. Robinette* (1996) 519 US 33); no need to give Miranda warnings before requesting consent (*People v. James* (1977) 19 Cal. 3d 99); OK to get consent, even if suspect has already invoked Miranda (*People v. Ruster* (1976) 16 Cal. 3d 690). (12:31)

### DNA Testing of Discarded Cigarette Not a Search

with Jeff Rubin, Deputy District Attorney, Alameda County, CA  
A motel room rented by a probationer or parolee can be a "residence" for purposes of executing a search clause allowing searches of the residence of the probationer or parolee. There was probable cause to believe a motel room was a probationer's residence based on information from a reliable informant the probationer was staying at a particular motel room and verification of that information by a motel clerk. Case cited: *United States v. Franklin* (9th Cir. 2010) 603 F.3d 652. (6:57)

### Consent Searches: Q&A x7

with Devallis Rutledge, Special Counsel, Los Angeles CO District Attorney's Office  
Justice Bedsworth discusses the use of old information to obtain a search warrant— explaining when your information is too old and needs to be refreshed. He also gives some valuable pointers on when to seek warrants and how they can make your probable cause look better. Case cited: *People v. Jones* (2010) DJDAR 14085. (4:50)

### Some Issues Involving Line-ups

with Jeff Rubin, Deputy District Attorney, Alameda County, CA  
A post-impound inventory search that is statutorily-authorized because the driver has no license is still constitutionally invalid where the inventory search is expressly conducted for the purposes of finding narcotics and not to carry out any community caretaking function, i.e., where no evidence is presented the vehicle is at an enhanced risk of vandalism, is impeding traffic or pedestrians, or could not be driven away by someone other than the arrestee. Case cited: *People v. Torres* (2010) 188 Cal.App.4th 775. (6:54)